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March 2, 2007

DEPARTMENT OF ENERGY  
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Name of Case: Personnel Security Hearing

Date of Filing: November 8, 2006

Case Number: TSO-0451

This Decision concerns the eligibility of xxxxxxxxxxxxxxxx (hereinafter "the individual") for continued access authorization. The regulations governing the individual's eligibility are set forth at 10 C.F.R. Part 710, "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." This Decision will consider whether, based on the testimony and other evidence presented in this proceeding, the individual's access authorization should be restored. For the reasons detailed below, it is my decision that the individual's access authorization should be restored.

I. BACKGROUND

On August 22, 2006, the DOE issued a notification letter to the individual. Attached to the notification letter was a statement entitled "Information creating a substantial doubt regarding eligibility for an Access Authorization" (hereinafter referred to as the "information statement"). The information statement indicates that the individual was evaluated by a DOE consulting psychologist, who determined the individual met the criteria for Attention Deficit/Hyperactivity Disorder (ADHD). The DOE consulting psychologist's report indicated that ADHD may cause this individual to have a significant defect in her judgment or reliability. Her report pointed out that the individual's ADHD has caused her to shop impulsively, and impulsive shopping has caused her to have financial problems.

The information statement indicates that the DOE consulting psychologist's finding that the individual has a defect in her judgment and reliability raises a security concern under Criterion H. 10 C.F.R. §710.8(h). The notification letter informed the individual that she was entitled to a hearing before a hearing officer in order to respond to the information contained in the notification letter. The individual requested a hearing. I was appointed to serve as the hearing officer. In accordance with 10 C.F.R. § 710.25(e) and (g), I convened a hearing in this matter (the hearing).

The individual believes the combination of her current ADHD medication and the skills she has developed to control the symptoms of ADHD mitigate the Criterion H security concern. Transcript of Hearing (Tr.) at 83. Below is a summary of the testimony at the hearing.

## II. HEARING TESTIMONY

### A. The DOE Consulting Psychologist

The DOE consulting psychologist was the first witness at the hearing. She described the history of the individual's treatment for ADHD. The individual met with the first treating psychologist several times between July 2004 and November 2005. The first treating psychologist referred her to a treating psychiatrist who prescribed Adderall and Zoloft. Tr. at 12. She stopped seeing the first treating psychologist when her insurance coverage expired. DOE Consulting Psychologist Report at 4 and Tr. at 25. The individual started meeting with a second treating psychologist in July 2006. She also diagnosed the individual with ADHD. The individual's medication was changed from Adderall to Concerta in December 2006. Tr. at 169.

The DOE consulting psychologist testified that based on her evaluation she also diagnosed the individual with ADHD. Tr. at 16 and 21. The DOE consulting psychologist then described some of the individual's ADHD symptoms

She tends to be disorganized, loses track of bills, procrastinates, and her attention deficit sometimes affected her ability to manage her money, and it contributed to what she termed as compulsive spending.

Tr. at 14. She also testified that the individual is "usually late to work, that she tends to lose attentional focus in meetings and sometimes forgets what to do. She said she forgets little things all the time." Tr. at 17. The individual understands that her financial difficulties are the result of her attention deficits. Tr. at 14.

The DOE consulting psychologist testified that ADHD is not curable, but medication can "help control the symptoms." Tr. at 31. Additionally, there are coping skills and strategies that control the symptoms of ADHD. Tr. at 32. In this regard the DOE consulting psychologist testified that at the time of her interview with the individual, May 2006, the individual had developed "coping skills" in order to perform her job. Tr. at 18. The individual uses a headset to block auditory distractions and is able to hyperfocus on an important project. Tr. at 18. The DOE consulting psychologist also testified that there was nothing in the individual's security file that indicated any problems with her job performance. Tr. at 18. The DOE consulting psychologist did not recall any coping strategies that related to the individual's personal life.

### B. The Individual

The individual testified that she was initially diagnosed with ADHD by her general physician in June 2004 and again by her first treating psychologist in July 2004. Tr. at 40. On July 14, 2006, she was evaluated by the second treating psychologist. He confirmed the previous ADHD diagnosis. Individual's Exhibit #29.

The individual stated that during 2005 and 2006 she did a significant amount of reading about ADHD and she indicated by the summer of 2006 she understood the impact ADHD was having on her life. Tr. at 41.

Beginning in July 2006, she had 13 counseling sessions with the second treating psychologist. The purpose of those counseling sessions was to develop a plan to help the individual improve her coping skills in such areas as time, money, and mood management. Tr. at 103-105 and Individual's Exhibit #29. She testified that since 2005 she has understood that her financial difficulties were related to ADHD. However, until the counseling session started in the summer of 2006 she "didn't understand it meant you've got to establish a budget, and this is what a budget means. So I knew it was a factor, but I didn't understand what it meant to change it." Tr. at 96. The individual summarized the change in her understanding of ADHD

I realize that ADHD has affected me in so, so many ways, and my self-esteem as well. So what happened is, when I was having problems, I thought I was stupid, I thought I was crazy. I thought all I needed to do was try harder. I was too ashamed to ask for help, because seemingly, everyone else was doing it, and I couldn't, and so there was something wrong with me, . . . I am learning that's not the case, and I'm learning to surround myself with people who can accept the fact that I'm ADHD.

Tr. at 84.

She testified that she now recognizes her tendency to be impulsive. She now tries to "slow things down. I've got to focus on one thing at a time and not try to do five things at one time. By doing that, it's really helped me to remember to place things in my long-term memory." Tr. at 54. The individual testified that she takes her medicine regularly because she is feeling better and wants to continue feeling better. Tr. at 140.

### C. The Individual's Friends

#### 1. The First Friend

The first friend testified that he has known the individual for three years. They first meet in a local bowling league. Tr. at 60. They got to be friends a year later when they realized their children were involved in the same gymnastics class. Tr. at 75. The individual told him in 2005 that she had been diagnosed with ADHD. She believes the individual was relieved by the diagnosis because she was better able to understand past events. Tr. at 60. She testified that when she first met the individual she was "very, very loud; very energetic. However, since she was diagnosed and placed on medication, [there has been a] huge change." Tr. at 64. She testified that she has observed that the individual is calmer and is able to make better decisions. Tr. at 64, 72 and 73.

#### 2. The Second Friend

The second friend testified that she has known the individual for seven years. She has been involved with the individual in a number of activities involving their daughters. Tr. at 120. She is currently the second grade teacher of the individual's daughter. Tr. at 107.

The second friend described changes she has observed in the individual's coping skills. She testified that prior to the individual's counseling/medication, the individual was easily frustrated and often got upset.

She believes that since the counseling/medication, the individual is able to work through her problems. Tr. at 116. “I think that you are easier to get along with, because you have more peace with yourself now, too and you are much calmer.” Tr. at 116.

She testified that prior to 2006 the individual had difficulty with organization and time management. “I was really impressed when I visited you at the house this summer right before school started, and you had this really big calendar on the wall of the way into the family room with everything, you know, written down and ready – it was a schedule for [the individual and her two children] so that she could keep all three schedules organized.” She also described a chalk board that the individual has in her family room where she keeps detailed notes about upcoming activities for each member of the family. Tr. at 118. She testified that during first grade the individual’s daughter was often tardy. However, during the current school year, which started in September 2006 the individual’s daughter always arrives at school on time. Tr. at 120. She also testified that during the prior school year, the individual did not complete school paperwork or pay her bills on time. However, during the current school year, which started in September 2006, she has completed school paperwork and paid all of her bills on time. Tr. at 133.

She testified that prior to counseling/medication the individual “was always moving around and, you know, moving from place to place . . . and she would not necessarily look straight at me, or she would be walking around when we were talking, and now, you know, we just sit and we talk, and it much more relaxing.” Tr. at 129. Prior to July 2006, the individual and she had arguments “because she was perhaps short-tempered or easily frustrated, due to her not understanding her ADHD, and now she is much more calm and much easier to get along with.” Tr. at 133.

#### D. The Individual’s Supervisors

The individual’s first supervisor testified that he has been the individual’s direct supervisor for 5 months and that he is aware that the individual has been diagnosed with ADHD. Tr. at 157 and 161. He interacts with the individual several times per day. Tr. at 158. He testified that the individual has been a top performer who always completes assignments on time. Tr. at 159. He indicated the individual is good with detail and resourceful in solving problems. Tr. at 159.

The individual’s second supervisor testified that prior to the individual’s assignment to the first supervisor she supervised the individual for 4 years. Tr. at 173. She indicated that the individual is a good employee who produces very good work product. Tr. at 176. The individual takes detailed notes of meetings and always completes work assignments. Tr. at 176.

#### E. The DOE Consulting Psychologist

After hearing the testimony, the DOE consulting psychologist testified for a second time. She testified that the individual recognizes that managing her ADHD symptoms is an “ongoing process.” However, she believes that the individual now understands her symptoms and her medication is helping her. Tr. 166. “It is a big change from what I saw in May, from the person that I read about in her [personnel security file], to the person that we’re hearing about today.” Tr. at 166.

She testified that the individual is “taking appropriate and effect steps to ameliorate [the judgment and reliability] concerns.” Tr. at 165. The individual “is using multiple coping skills, prioritizing, taking on less, she’s on time, see seems to be able to calm down and think enough to curtail her spending . . .” Tr. at 166. She testified that the judgment and reliability risk that she saw in May 2006 has been significantly reduced. Tr. at 166.

After the hearing the DOE counsel submitted a statement from the DOE consulting psychologist which indicates the reasons that she believes the individual will continue to take her medication and will continue to use the coping skills she has developed:

Individuals with ADHD do not typically enjoy their symptoms. In children and adults concomitant depression and anxiety are common as they struggle to deal with the demands of daily life. When such individuals find a medication that controls their distractibility, poor attentional focus, scattered thinking, and hyperactivity, they experience relief (as [the individual] indicated), and find that medication to be necessary for success in life. Additionally, if such individuals find coping skills that work and allow them to lead a productive and successful existence, rather than one filled with frustration and half-done jobs, they hang on to those skills and use them. This has been my experience with individuals with ADHD. They typically do not want to go back to the way things were, there is no pleasure for them in being without their medication, and if the medication they are on starts not to work, they go back to their physician to find one that does. They are not fighting against a pleasurable experience that has detrimental side effects the way an individual with drug and alcohol disorders has to.

Post Hearing Submission by DOE Counsel.

### III. REGULATORY STANDARD

In order to frame my analysis, I believe that it will be useful to discuss briefly the respective requirements imposed by 10 C.F.R. Part 710 upon the individual and the hearing officer.

#### A. The Individual's Burden of Proof

It is important to bear in mind that a DOE administrative review proceeding under this Part is not a criminal matter, where the government would have the burden of proving the defendant guilty beyond a reasonable doubt. Once a security concern has been raised, the standard in this proceeding places the burden of proof on the individual to bring forth persuasive evidence concerning his eligibility for access authorization. 10 C.F.R. §§ 710.21(b)(6), 710.27(b), (c), (d).

This burden is designed to protect national security interests. The hearing is "for the purpose of affording the individual an opportunity of supporting his eligibility for access authorization." 10 C.F.R. § 710.21(b)(6). The individual must come forward at the hearing with evidence to convince the DOE that

restoring her access authorization "would not endanger the common defense and security and would be clearly consistent with the national interest." 10 C.F.R. § 710.7(a).

This is not an easy evidentiary burden for the individual to sustain. The regulatory standard implies that there is a presumption against granting or restoring an access authorization. *See Department of Navy v. Egan*, 484 U.S. 518, 531 (1988) ("clearly consistent with the national interest" standard for the granting of access authorizations indicates "that security determinations should err, if they must, on the side of denials"); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9th Cir. 1990), cert. denied, 499 U.S. 905 (1991) (strong presumption against the issuance of an access authorization). Consequently, it is necessary and appropriate to place the burden of persuasion on the individual in cases involving national security issues. In addition to her own testimony, the individual in these cases is generally expected to bring forward witness testimony and/or other evidence which, taken together, is sufficient to persuade the hearing officer that restoring access authorization is clearly consistent with the national interest. *Personnel Security Hearing* (Case No. VSO-0002), 24 DOE ¶ 82,752 (1995).

#### B. Basis for the Hearing Officer's Decision

In a personnel security case under Part 710, it is my role as the hearing officer to issue a decision as to whether granting an access authorization would not endanger the common defense and security and would be clearly consistent with the national interest. 10 C.F.R. §710.27(a). Part 710 generally provides that "[t]he decision as to access authorization is a comprehensive, common-sense judgment, made after consideration of all relevant information, favorable and unfavorable, as to whether the granting of access authorization would not endanger the common defense and security and would be clearly consistent with the national interest." 10 C.F.R. § 710.7(a). I must examine the evidence in light of these requirements, and assess the credibility and demeanor of the witnesses who gave testimony at the hearing.

#### IV. ANALYSIS

The issue in this case is whether the individual has sufficiently mitigated the Criterion H security concern associated with her ADHD. As discussed below, I find that she has brought forward sufficient witness testimony to satisfy her burden in this regard.

As an initial matter, the testimony of the individual's friends convinced me that that since July 2006 she has gained control over her mood swings during her non-work hours. Their testimony also indicated that the individual has developed mechanisms to organize family activity and finances. The testimony of the two supervisors assured me that the individual has always been able to focus on her assigned duties during work hours and she has never had any work-related problems related to ADHD. The individual's own testimony was credible, too. I am satisfied that she understands that she needs to continue to take her medication and to utilize coping skills. She clearly indicated that she will use budgets and spending limits in order to avoid future impulsive spending. The testimony of the witnesses also convinced the DOE consulting psychologist that since July 2006 the individual's medication and coping skills have significantly reduced the effect ADHD is having on her life. The DOE consulting psychologist is also persuaded that the individual will continue to take her medication and she will continue to utilize the coping skills she has recently developed.

Based on the above testimony, I am convinced that ADHD will not have a significant effect on the individual's future judgment and reliability both on and off the job. Therefore, I find that the risk of future judgment and reliability problems is low for this individual. Accordingly, I find that the individual has adequately mitigated the DOE's Criterion H security concern. See *Personnel Security Hearing* (Case No. TSO-0320), 29 DOE ¶ 82,920 (2006).

## V. CONCLUSION

I have concluded that the individual has mitigated the DOE security concerns under Criterion H of 10 C.F.R. § 710.8. In view of the record before me, I am persuaded that restoring the individual's access authorization would not endanger the common defense and security and would be clearly consistent with the national interest. Accordingly, I find that the individual's access authorization should be restored.

The review procedures applicable to proceedings under Part 710 were revised effective September 11, 2001. 66 Fed. Reg. 47061 (September 11, 2001). Under the revised procedures, the review is performed by an Appeal Panel. 10 C.F.R. § 710.28(b)-(e).

Thomas L. Wieker  
Hearing Officer  
Office of Hearings and Appeals

Date: March 2, 2007